

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 819 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

.....1 to 5 : No

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BHARAT KALAYANSINGH MAHIDA

Versus

STATE OF GUJARAT

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Appearance:

MR JR DAVE for the appellants  
Mr.S.R.Divetia, LAPP for Respondent No. 1

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CORAM : MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

Date of decision: 10/02/97

ORAL JUDGEMENT (N.J.Pandya,J.)

The accused-appellants were facing trial before the additional City Sessions Judge, 7th Court, Ahmedabad in Sessions Case No.103 of 1988 for offence under Sec.302 read with Sec. 34 of Indian Penal Code, as also under

Sec.135 of B.P.Act. By her order dated 25-3-1988, the learned Judge was pleased to convict both the accused and had awarded R.I. for life for offence under 302 IPC and for offence under Bombay Police Act, S.I. for six months. Both the substantive sentences were ordered to run concurrently.

2. The case of the prosecution is that on 10-2-1987 at about 8.00 p.m., the deceased came on his motor cycle and started dogging with accused no.2 who was sitting at Royal Body Works. Sitting on his motor bike, the deceased started talking with said accused, which resulted raising of voice and verbal clash. At that time, accused no.2 is said to have come from the back with a knife and had started inflicting blows on the back of the deceased. Being unaware the deceased staggered and accused no.1 sitting on a chair all through out, caught hold of deceased and making use of a gupti, which he had with him, he gave blows to the front. The deceased was running a shop dealing in T.V., VCR and other such articles. He had a shop in the area of the incident. By way of background of the incident, it is stated that about 2 years back, maid servant of the deceased was being harassed by both the accused and therefore, the deceased had reprimanded the accused and at the intervention of the elder brother of the deceased, the matter was settled. However, the accused were carrying grievance with regard to this. At about the time of the incident, one Dharmendra, the tenant of the deceased had made a grievance before the deceased that the accused are harassing him in relation to the money of V.C. Transaction, a sort of mutual fund being run privately. On the day of the incident itself, according to the prosecution, the deceased was approached by that Dharmendra again saying that accused have threatened him with life.

2. This would explain the said action of the deceased that he went on his motor bike to the place where accused no.1 was sitting. The complainant Sumitraben, widow of the deceased was informed by a neighbour that her husband is being attacked with knives. She rushed there immediately and saw her husband lying in a pool of blood near a place called "karachi Hotel". In fact, it is a bakery dealing in bread and other such articles. At that time, she saw both the accused running towards railway line, which is to the east of the place where her husband was lying. There is a level crossing also directly opposite to such Karachi hotel. Said Sumitraben p.w.1, exh.18 page 55 of the paper book has deposed the things narrated above and also proved her

complaint which came to be exhibited through the deposition of PSI Mr.Chandrakumar p.w.19 Exh.53, page 148. The FIR is at Exh.54 page 156 of the paper book. In the cross examination of the complainant, no much could be brought about. Except for denial, there is hardly any progress made in her examination by the defence.

3. One eye witness has been examined by the prosecution. He is Yusufbhai Siddiqbhai, p.w.6, Exh.29 page 87 of the paper book. His assertion in the examination in chief that both the accused were known to him because they were coming to visit their friends residing in the neighbourhood of the witness, has not been challenged by the defence. He had come to said Karachi Hotel for purchasing the bread. Therefore, submission was made that he should be treated as a chance witness as bread and such bakery items were available at a place nearby his residence. Thereafter, further attempt was made to show that because of a protruding ice-cream parlour, he could not have seen the incident as the height of that stall would have obstructed the vision of the witness. However, the protrusion is of hardly 3" to 4" and the height may be 5' as suggested by L.A. Mr.Budhbhatti. That by itself will not prevent the witness from seeing the incident.

4. It is this witness who says that the deceased came on a motor bike and started talking with accused no.1, who was sitting on a chair. The witness claims that the deceased was known to him casually. Except for denial in the cross examination, nothing further has been done in this regard.

5. That apart, the description given by the witness about the blows being given by and large is corroborated by the medical evidence in form of deposition of Dr.Arun Tyagi,p.w.3 exh.21 who examined the body and also Dr.R.Krishna who performed the post mortem examination. His deposition as p.w.2 is recorded at Exh.19 page 60 and post mortem report is Exh.20 at page 66 onwards.

6. Injuries on the back by a sharp cutting instrument as well as from the front in neck and throat reaching towards clevical side are clearly found.

7. The latter injuries have gone deep upto the left lung completely finishing it. There are three such injuries. In the same location when 3 blows were given by a weapon like Gupti said to have been wielded by accused no.1, internal injuries noted in the post mortem note clearly would be the result. From rear accused no.2

is said to have given blow on the back of the deceased and there are corresponding injuries nos.20, 21 and 22 corroborating the same. This has resulted into internal injuries.

8. Under the circumstances, in our opinion, the case of the prosecution is clearly made out from the said two witnesses. No doubt, the complainant would certainly be paying attention to her dying husband who was lying on the ground. However, as it so happens, according to the prosecution case, the accused after the incident started running away from the place and for that they had to pass by said Karachi hotel because the level crossing is just opposite to that bakery. Therefore, the complainant, who had come on the scene, after the incident was over, would naturally be there and because of the said escape route, she would have certainly seen the accused running away and exactly that is what she has deposed in her deposition. As the eye witness was standing near the said bakery, he too had the similar advantage of the location and the accused would have been passed by that spot because of that escape route. Under the circumstances, we have no hesitation in holding that the learned trial Judge has rightly relied on the testimony of these two witnesses and the order of conviction is eminently justified.

9. In the alternative, L.A. Mr.Budhbhatti appearing for the appellants had strongly urged that as the incident has happened all of a sudden, in course of a quarrel, it may be treated as a case of sudden quarrel and it cannot be treated as a premeditated crime. As stated above, as 3 to 4 blows have been inflicted by each of the accused, this alternative submission cannot be accepted.

10. The net result is that the appeal fails. It is accordingly dismissed. The order of the trial Court is confirmed.

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